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IN THE

Supreme Court of the United States

OCTOBER TERM, 1954

NO. 626

EUGENE KORMUTH, Petitioner

v.

UNITED STATES STEEL COMPANY, HILLMAN COAL & COKE COMPANY and EMERALD COAL AND COKE COMPANY

BRIEF FOR RESPONDENTS HILLMAN COAL & COKE COMPANY AND EMERALD COAL AND COKE COMPANY IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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EUGENE KORMUTH, Petitioner

v.

UNITED STATES STEEL COMPANY, HILLMAN COAL & COKE COMPANY and EMERALD COAL AND COKE COMPANY

On Petition for a Writ of Certiorari to the Supreme Court of the United States

BRIEF FOR RESPONDENTS HILLMAN COAL & COKE COMPANY AND EMERALD COAL AND COKE COMPANY

QUESTION PRESENTED

Whether the construction of a deed by the Supreme Court of Pennsylvania in a manner adverse to Petitioner deprives Petitioner of his property without due process of law in contravention of the Fourteenth Amendment to the Constitution of the United States.

STATEMENT

The facts set forth in Petitioner's Statement on pages 3 *et seq.* of his Petition are accepted by these Respondents as substantially accurate for the purposes of this Brief in opposition to the present Petition. The Respondent, Hillman Coal & Coke Company, although named in the caption to the Petition as a party, was not involved in the relief sought by the Petitioner in the Pennsylvania Supreme Court. Therefore, no further mention of said Respondent will be made herein.

ARGUMENT

The Petition herein for a Writ of Certiorari wholly fails to present any genuine Federal question which would justify the allowance of such a writ. For that reason, we do not propose to burden this Court with a lengthy brief in opposition thereto. Petitioner's sole complaint and reason for requesting the writ is that the decision of the Supreme Court of Pennsylvania deprives him of his property without due process of law and contravenes the prohibition of the Fourteenth Amendment to the Constitution of the United States. It is clear from the Petitioner's Statement, pages 3 *et seq.*, that the decision in the case at bar simply involves the construction of the language of a deed. No State or Federal statute is in any manner involved.

We submit that the decision of the Supreme Court of Pennsylvania in construing the deed granting property rights to the predecessor in title of the Respondent, Emerald Coal and Coke Company, was plainly correct. That deed conveyed the coal seam under many acres of land, together with the usual mining rights and "together with the privilege of mining and removing through said described premises other coal belonging to the grantee, its successors and assigns, or which may hereafter be acquired." As to the question presented herein by the Petitioner, the Supreme Court of Pennsylvania simply held that the Respondent, Emerald Coal and Coke Company, was a successor or assignee of the original grantee within the meaning of the above recited clause of the deed and, therefore, had the right to transport its coal from other coal lands through the said premises.

Argument.

Assuming, solely for the purpose of argument, that this was an improper construction of the language of said deed, the decision of the Supreme Court of Pennsylvania would not constitute a violation of that portion of the Fourteenth Amendment to the Constitution of the United States which provides: "nor shall any State deprive any person of life, liberty or property without due process of law." There is a long line of decisions by this Court to the effect that the decision of a State Court in the regular course of its judicial proceedings, whether erroneous or not, does not deprive the unsuccessful litigant of property without due process of law.

Central Land Company of West Virginia v. Laidley, 159 U. S. 103 (1895).

Tracy v. Ginzberg, 205 U. S. 170 (1907).

McDonald v. Oregon Railroad & Navigation Company, 233 U. S. 665 (1914).

American Railway Express Company v. Kentucky, 273 U. S. 269 (1927).

Neblett v. Carpenter, 305 U. S. 297 (1938).

The case at bar involves only the application of fundamental principles of law to private rights in real property arising under agreements between private parties, all of which are matters over which the Courts of Pennsylvania have complete and exclusive jurisdiction. If Petitioner's view were correct that the action of the Supreme Court of Pennsylvania deprived him of his property without due process of law simply because his interpretation of the aforesaid private agreements and the rights arising therefrom differed from that of the Court, then every judgment or decree of a State Court involving purely private matters and the rules of the

common law applicable thereto could be brought to this Court for review. Such a conclusion is unthinkable.

Petitioner in his amended Complaint and in his argument before the Supreme Court of Pennsylvania contended that the use of an underground haulageway by Respondent, Emerald Coal and Coke Company, was a taking of Petitioner's property. Although that contention is not definitely raised by the Petition, it is suggested at pages 5 and 6 thereof.

Beginning with the decision of this Court in the *Civil Rights Case,* 109 U. S. 3 (1883), it has become a firmly established principle of constitutional law that the Fourteenth Amendment prohibits only action by the states. It has no application to the conduct of individuals no matter how wrongful or improper such conduct might be. Thus, the use of the underground haulageway by Respondent, Emerald Coal and Coke Company, could not possibly have been a taking of property in violation of the due process clause of the Constitution. Accordingly, no genuine Federal question was presented to the Supreme Court of Pennsylvania in this case.

The Petition for Certiorari should be denied.

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March, 1955.